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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.												
10/802,745	03/18/2004	Tuan Q. Tran	07860004US	5337												
7590 McGuire Woods LLP Suite 1800 1750 Tysons Boulevard McLean, VA 22102		12/27/2007	<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">PATEL, NIHIR B</td></tr><tr><td>ART UNIT</td><td>PAPER NUMBER</td></tr><tr><td>3772</td><td></td></tr><tr><td>MAIL DATE</td><td>DELIVERY MODE</td></tr><tr><td>12/27/2007</td><td>PAPER</td></tr></table>		EXAMINER		PATEL, NIHIR B		ART UNIT	PAPER NUMBER	3772		MAIL DATE	DELIVERY MODE	12/27/2007	PAPER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/802,745

Applicant(s)

TRAN ET AL.

Examiner

Nihir Patel

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10.05.2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12, 15-22 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12, 15-22 and 24-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on October 5th, 2007 have been fully considered but they are not persuasive. In response to applicant's argument that Walker does not disclose a vent proximate the top of the hollow body configured to receive ambient air upon the patient's inhalation, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use then it meets the claim.

The applicant also argues that Walker does not teach a nebulizer inlet and a nebulizer outlet that are both proximate the bottom of the hollow body. The examiner disagrees. The top part of the hollow body is defined as chamber 10; the bottom part of the hollow body is defined as the container 25. The nebulizer inlet and nebulizer outlet are both proximate the bottom of the hollow body.

In reference to the applicant's arguments that the 35 U.S.C. § 102(b) rejection is improper and must be withdrawn, the examiner agrees and the current office action will be made non-final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims **12, 15-22, 24-28** are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (US 6,679,250).
4. As to **claim 12**, Walker teaches an apparatus that comprises a hollow body (see **figure 1**; the top part of the body is **chamber 10**; the bottom part of the hollow body is the container **25**); a connection port proximate the bottom of the hollow body (**the distribution cap is defined as the connection port**); a vent **47** proximate the top of the hollow body (see **figures 1, 4a and 4b**; **column 5 lines 55-65**); configured to receive ambient air upon patient's inhalation; a nebulizer inlet and a nebulizer outlet proximate the bottom of the hollow body (see **column 5 lines 30-45**); a baffle at least partially disposed within the hollow body, such that the baffle **32** is a barrier and wherein the hollow body and the baffle define an airflow path having portions parallel to one another through an interior of the hollow body (see **figure 1**; **column 5 lines 40-50**); wherein the drug delivery mouthpiece **12** is structured and arranged such that the patient's inhalation generates an air flow that allows the air flow path defined by the hollow body and the baffle to deliver a medicament to the patient (see **figure 1 and column 5 lines 1-5; 65-67 and column 6 lines 1-5**).
5. As to **claim 15**, Walker teaches an apparatus wherein the baffle includes a substantially planar member disposed between an intake flow path and a delivery flow path (see **figure 1**).
6. As to **claim 16**, Walker teaches an apparatus wherein the connection port is configured to attach and detach to a chamber (see **figure 1**).

7. **As to claim 17**, Walker teaches an apparatus wherein the baffle is configured to protrude into the chamber connected to the connection port (**see figure 1**).
8. **As to claim 18**, Walker teaches an apparatus wherein the baffle is configured to direct an airflow to an intake flow path out of the hollow body and into the chamber connected to the connection port, and the baffle is configured to direct an airflow toward a delivery flow path from the chamber connected to the connection port into the hollow body (**see figure 1**).
9. **As to claim 19**, Walker teaches an apparatus that further comprises a delivery conduit arranged proximate the top of the hollow body (**see figure 1**).
10. **As to claim 20**, Walker teaches an apparatus wherein the conduit includes an exhaust outlet 11 (**see figure 1**).
11. **As to claim 21**, Walker teaches an apparatus wherein the exhaust outlet is selectably sealable (**see figure 1**).
12. **As to claim 22**, Walker teaches an apparatus wherein the exhaust outlet includes a one-way valve (**see figure 1**).
13. **As to claim 24**, Walker teaches an apparatus that further comprises a delivery conduit arranged between the top of the hollow body and the bottom of the hollow body (**see figure 1**).
14. **As to claim 25**, Walker teaches an apparatus wherein the vent is sealably configured (**see figures 1, 4a and 4b; column 5 lines 55-65**).
15. **As to claim 26**, Walker teaches an apparatus wherein the nebulizer is configured to aerosolize a substance (**see the summary of the invention**).
16. **As to claim 27**, Walker teaches an apparatus wherein the substance includes medicament (**see the summary of the invention**).

17. **As to claim 28**, Walker teaches an apparatus wherein the vent is configured to exhaust air upon the patient's exhalation. (see figures 1, 4a and 4b; column 5 lines 55-65).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit 3772



Nihir Patel



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12/21/07